

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1057 of 2011**

Kapil Kumar Rajak S/o Prasad Rajak, Aged about 34 years, R/o Village Aat, P.S. Madanpur, Aurangabad, Bihar, Present Address Patnaik House, Vahidapara, Raigarh Tahsil And Dist. Raigarh, Chhattisgarh

---- Appellant**Versus**

1. Kirtan Mehar @ Devendra S/o Kedarnath Mehar, Aged about 40 years, R/o Kostapara, Raigarh, Tahsil and District Raigarh Chhattisgarh
2. Suraj Mehra S/o Jagdish Prasad Mehar, R/o N-12 Aasra Parisar Chaubey Colony, Raipur, At Present In front of Jajandhar, Kostapara Raigarh, Tanshil & District Raigarh Chhattisgarh
3. The Ifko Tokiyo Insurance Company Ltd. Through Branch Manager, Lal Ganga Shopping Mall, Shop No. 345 To 347, Third Floor, Jai Stambh Chauk, Raipur, District Raipur Chhattisgarh

----Respondents

For Appellant	:	Mr. Manoj Kumar Sinha, Advocate
For Respondent No.3	:	Mr. P. Acharya, Advocate on behalf of Mr. Amrito Das, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/01/2018**

1. Present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act assailing the award dated 05.08.2011, passed by the 1st Additional Motor Accident Claims Tribunal, Raigarh, Chhattisgarh, in Claim Case No. 16/2011.
2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.29,230/- with interest @ 6% per annum from the date of application.
3. The counsel for the appellant submits that in the instant case, the Tribunal has assessed the compensation unreasonably low and he submits that taking into consideration the grievous injury that the

appellant has sustained and which was established by leading an evidence of a Doctor, the compensation ought to have been sufficiently enhanced. He further submits that it is a case where the appellant had received multiple fractures all over his body, but even the Doctor had opined him of suffering from 45% of permanent disability, but no compensation in this regard has been provided, and thus prayed for the amount to be suitably enhanced.

4. Counsel for the Insurance Company however opposing the appeal submits that it is a case where the compensation has been properly awarded considering the evidence which have come on record and therefore there does not appear to be any scope for interference with the impugned award.
5. Having heard the contentions put forth on either side and on perusal of record, undisputedly from the evidence of the Doctor itself, it reveals that the appellant has received multiple rib fractures on left side, so also his left clavicle bone was fractured and further he has also received a fracture injury on the left scapula bone. This by itself establishes the multiple fracture injury sustained by him and that the appellant must have undergone great amount of pain and suffering in the course of treatment and recovery of these injuries. He further submits that the Dr. Sharad Awasthi was examined and proved the injuries, and who has categorically deposed that the injured in the instant case was suffering 45% of permanent disability.
6. In view of the same, this Court is of the opinion that the amount of compensation awarded is unreasonably low and the same deserves to be suitably enhanced as the Court does not seem to have provided any compensation for the disability that has been caused. It

was further contended by the counsel for the appellant that the income of the deceased assessed was also on the lower side as he was working as a medical representative and had claimed for earning of Rs.5000/- a month.

7. This Court considering the facts and circumstances of the case and looking to the period of accident assesses the income of the deceased at Rs.4500/- instead of Rs.3000/- as assessed by the Tribunal, as during the said period, even the unskilled labour in the State would had been earning more than Rs.150/- a day, which would make it Rs.4500/- a month.
8. Further taking assistance from the judgment of Hon'ble Supreme Court in the case of ***“Rajkumar vs. Ajay Kumar and Another”*** **(2011) 1 SCC 343** this Court assesses the permanent disability of 20% incurred by the Claimant as the 45% assessed by the Doctor was in respect of the functional disability at the portion of the injury caused. Assessing 20% of the permanent disability, if we assess the income of the deceased at Rs.4500/- which makes the annual income at Rs.54,000/-, of which 20% comes to Rs.10,800/-. Thus, if Rs.10,800/- is the loss of income of the injured per annum, which when multiplied applying the multiplier of 16 considering the age of the injured at 34 years, the total amount comes to Rs.1,72,800/-, which for the purpose of quantification of compensation is assessed at a lump sum amount of Rs.1,75,000/-. It is ordered accordingly that the Claimant shall be entitled for an amount of Rs.1,75,000/- for disability that has caused in addition to the amount of Rs. 29,230/- which has already been awarded by the Tribunal.

9. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
10. The appeal thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

Ved